

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DAVID S. CHANEY
Chief Assistant Attorney General
3 ROCHELLE C. EAST
Acting Senior Assistant Attorney General
4 JONATHAN L. WOLFF
Supervising Deputy Attorney General
5 KYLE A. LEWIS, State Bar No. 201041
Deputy Attorney General
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 703-5677
Fax: (415) 703-5843
8 Email: Kyle.Lewis@doj.ca.gov

9 Attorneys for Defendants James Tilton, Jeanne
Woodford, Suzan Hubbard, Anthony P. Kane, Ben
10 Curry, W. J. Hill, B. Hedrick, and N. Grannis

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 **ARMANDO VINCENT MUNOZ,**

16 Plaintiff,

17 v.

18 **JAMES TILTON, et al.,**

19 Defendants.
20

Case No. C 07-3846 JF

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS**

21 **INTRODUCTION**

22 In his Opposition to Defendants' Motion to Dismiss, Plaintiff argues that his claims should
23 not be dismissed under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff's Complaint
24 meets the threshold requirement for pleadings. Plaintiff also argues that his Complaint should
25 not be dismissed because the Defendants' approved vendor policy violates Plaintiff's rights to
26 freely exercise his religious beliefs. Lastly, Plaintiff contends that Defendants cannot claim
27 qualified immunity from liability for civil damages under 42 U.S.C. § 1983.

28 As more thoroughly discussed below, Plaintiff's claims are not sufficiently plead and

1 should be dismissed. Plaintiff fails to state a claim against Defendants for violation of Plaintiff's
 2 First Amendment right to the free exercise of religion. Plaintiff's allegations against certain
 3 Defendants arising from their role in processing his administrative grievance or promulgation of
 4 prison policies are not sufficiently plead to attach liability to these individuals. Furthermore,
 5 Defendants are entitled to qualified immunity because their conduct was constitutionally valid.
 6 Finally, Plaintiff fails to sufficiently allege the basis for an award of punitive damages, and his
 7 request for this type of damages must be dismissed.

8 STATEMENT OF THE CASE

9 Plaintiff is a prisoner in the California Department of Corrections and Rehabilitation
 10 currently incarcerated at the Correctional Training Facility (CTF), located in Soledad, California.
 11 On July 26, 2007, Plaintiff filed this action alleging that Defendants James Tilton, Jeanne
 12 Woodford, Suzan Hubbard, Anthony P. Kane, Ben Curry, W. J. Hill, B. Hedrick, and N. Grannis
 13 (Defendants) violated his First Amendment right to the free exercise of religion by restricting his
 14 possession of religious materials in prison. The action stems from an event that occurred on
 15 September 25, 2006, when personnel working in a mail room at the Correctional Training
 16 Facility withheld a package of compact discs mailed to Plaintiff. (Court Document (CD) # 1 at
 17 3(b).) These compact discs were withheld from Plaintiff because they came from an organization
 18 that was not on the list of approved vendors permitted to deliver materials to inmates in the
 19 custody of the California Department of Corrections and Rehabilitation (CDCR) under
 20 established department and facility operating procedures. (CD # 1 at Ex. A, p. 4.)

21 On May 22, 2008, Defendants filed a motion to dismiss Plaintiff's suit under Federal Rule
 22 of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, for a
 23 determination that Defendants are entitled to qualified immunity, and that Plaintiff's request for
 24 punitive damages is not supported by the allegations of the Complaint. On June 25, 2008,
 25 Plaintiff filed his opposition to Defendants' motion to dismiss.^{1/} (CD # 21.)

26
 27 1. Under the Court's Order of Service, Plaintiff's opposition was originally due on June 23,
 28 2008. (CD # 5, at 3.) On June 20, 2008, counsel for Defendants was contacted by the Pacific Justice
 Institute regarding a pending Association of Counsel on behalf of Plaintiff, which was ultimately
 Defs.' Reply Supp. Mot. to Dismiss

ARGUMENT

I.

PLAINTIFF'S ASSERTIONS THAT THE DEFENDANTS' ACTIONS VIOLATE THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT ARE IMPROPER BECAUSE THE COURT DID NOT FIND A COGNIZABLE CLAIM UNDER THAT LAW UPON SCREENING THE COMPLAINT.

In its Order of Service on Plaintiff's complaint, the Court found one cognizable claim--that Defendants allegedly violated Plaintiff's "First Amendment right to the free exercise of religion by restricting his possession of religious materials in prison." (CD # 5, at 2.) The Court did not find that Plaintiff stated a cognizable claim under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (RLUIPA). Thus, any claims by Plaintiff that Defendants denied him the ability to practice his faith in violation of RLUIPA, or that he is entitled to relief under RLUIPA, should not be considered because no such claim exists in this action. (See Pl's Opp'n to Defs' Mot to Dismiss, at 4, 6-8. (CD # 21).

II.

THE COURT SHOULD DISMISS THE COMPLAINT BECAUSE DEFENDANTS' ENFORCEMENT OF CDCR POLICY REGARDING RECEIPT OF MATERIALS FROM APPROVED VENDORS DOES NOT VIOLATE PLAINTIFF'S FIRST AMENDMENT RIGHT TO THE FREE EXERCISE OF RELIGION.

Defendants moved to dismiss Plaintiff's First Amendment claim because he failed to demonstrate how withholding the CDs under the CDCR policy prevented him from engaging in conduct mandated by his faith. *See Shakur v. Schiro*, 514 F.3d 878, 884 (9th Cir. 2008). Additionally, the CDCR policy to prevent introduction of materials into prisons from non-approved vendors serves a legitimate, reasonable, and constitutional penological interest in ensuring safety at its facilities. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987); *Turner v. Safley*, 482 U.S. 78, 89 (1987). In his opposition, Plaintiff raises a variety of RLUIPA-based issues regarding the viability of his Complaint, but as explained above, the Court did not

filed on June 23, 2008. (CD # 20.) As a professional courtesy and in the interests of saving the Court's resources in not having to consider a request for additional time, Defendants' counsel granted an extension to Plaintiff's counsel to file their opposition on or before June 25, 2008.

1 find a cognizable RLUIPA claim. Furthermore, Plaintiff's argument that his First Amendment
 2 claim is sufficiently plead is unconvincing and denies the legitimate basis for CDCR's approved
 3 vendor policy. For these reasons, Plaintiff's First Amendment claim must be dismissed.

4 **A. Plaintiff Fails to Sufficiently Allege that Receiving Religious CDs is Necessary**
 5 **for Him to Practice Sincerely Held Beliefs that Are Rooted in His Christian Faith.**

6 Plaintiff claims that Defendants substantially burdened his freedom to exercise his
 7 religious beliefs by denying him access to the CDs delivered to him. In demonstrating the
 8 sincerity of his Christian faith, Plaintiff states that he "sincerely subscribes to Biblical
 9 preferences, as indicated by his refusal to attend religious services that do not preach them" and
 10 that his "beliefs are also religious in nature, as indicated by the multiple scriptural references he
 11 provided in his complaint." (CD # 21 at 8-9.) However, Plaintiff does not make a sufficient
 12 connection between these beliefs and the need to receive the CDs in question. Listening to CDs
 13 containing spoken words or music is one, but not the only, method by which a person practices
 14 his or her religion.

15 Defendants' actions in denying Plaintiff religious CDs do not substantially burden his
 16 ability to practice his Christian faith, rather Plaintiff's actions have. Plaintiff has chosen not to
 17 avail himself of the religious services offered at CTF, claiming that he does not attend the chapel
 18 at the institution due to his religious convictions that the ministry does not function according to
 19 Biblical standards. (CD # 1 at Ex. A, p. 11.) By his own admission, Plaintiff has prevented
 20 himself from hearing the word of God preached for a period of time. (*Id.*) Where Plaintiff,
 21 incarcerated as a result of his actions, refuses to avail himself of the religious programs offered at
 22 a prison facility, he cannot expect absolute access to other forms of religious materials as he may
 23 in the general public. This is a point accepted by Plaintiff in his own opposition--while inmates
 24 maintain their First Amendment rights to the free exercise of their religion, those rights are
 25 necessarily limited by virtue of their incarceration. (CD # 21 at 6, quoting *O'Lone v. Estate of*
 26 *Shabazz*, 482 U.S. 342, 348 (1987).) *Turner v. Safley*, 482 U.S. 78, 89 (1987).) Because he
 27 cannot demonstrate how Defendants have substantially burdened his practice of religion,
 28 Plaintiff's claim should be dismissed.

B. CDCR's Regulations Regarding Receipt of CDs from Approved Vendors Serves Legitimate Penological Interests and Is Constitutionally Valid.

Even if it is shown that prison officials burdened conduct that is mandated by Plaintiff's faith, there is no violation of Plaintiff's First Amendment rights if the restriction imposed by the state was reasonably related to legitimate penological objectives. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). In order to determine whether a prison regulation is reasonable and constitutional, a four-part test is utilized to weigh the inmate's free exercise right against the state's legitimate penological interests. Where the state can demonstrate those legitimate interests, the regulation is valid. *Turner*, 482 U.S. at 89.

In applying the first step of the *Turner* test, Defendants demonstrate that there exists a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89. Plaintiff's opposition acknowledges that Defendants' concerns with respect to safety, security, and efficient operation of prisons "hav[e] some validity." (CD # 21 at 9-10.) Further, Plaintiff's citations to *Jesus Christ Prison Ministries v. Cal. Dep't of Corrs.*, 456 F. Supp. 2d 1188 (E.D. Cal. 2006) (*JCPM*), do not address the variety of requirements that approved vendors must comply with in the CDCR policies at issue in the instant case. Plaintiff's attempts to minimize these requirements, which address legitimate security and licensing concerns and were not raised in the *JCPM* case, ignore a crucial aspect of prison operations. Taken as a whole, the regulations at issue serve the legitimate interest of preventing the introduction of contraband or otherwise unwanted material into prison facilities, including CDs delivered to inmates by non-approved vendors.

The second factor of the *Turner* test requires courts to determine whether alternative means of expressing Plaintiff's religion remain available. *Turner*, 482 U.S. at 90. Plaintiff claims that the services and amenities offered by CTF "do not satisfy his hunger for Biblical knowledge." (CD # 21 at 11.) Thus, Plaintiff is claiming that his ability to utilize the chaplain, chapel, and religious library, to receive written religious materials, to congregate with fellow inmates, and to have the unfettered ability to preach the word of God is insufficient for his religious needs. It is difficult to understand how in this multitude of alternative means of expressing one's faith,

1 Plaintiff cannot find his religious sustenance. Moreover, Plaintiff does not adequately
2 demonstrate how these CDs, purportedly containing sermons and music, will fulfill his religious
3 needs.

4 Under the third *Turner* factor, courts must consider the impact of an accommodation on
5 guards, other inmates, and prison resources. *Ward v. Walsh*, 1 F.3d 873, 877 (9th Cir. 1992). In
6 their moving papers, Defendants noted that creating a special class of religious mail to allow
7 religious CDs into prisons could lead to a variety of problems at institutions. In his opposition,
8 Plaintiff states that "Defendants' favorable-treatment argument might carry more weight in this
9 case if Plaintiff has not alleged that a Buddhist inmate 'was already receiving religious . . . CDs
10 from an outside source.'" (CD # 21 at 13.) However, Plaintiff fails to provide further information
11 regarding those alleged CDs, including whether the outside source was an approved vendor, when
12 the CDs were received, or what exactly the CDs contained. Without this information, and even if
13 accepted in a light most favorable to Plaintiff, such an insufficient allegation regarding the receipt
14 of a Buddhist CD cannot invalidate Defendants' contention that the third *Turner* factor weighs in
15 their favor.

16 Lastly under the *Turner* test, courts must look to whether there is an absence of ready
17 alternatives which would indicate the regulation's reasonableness. *Turner*, 482 U.S. at 90. As
18 stated previously and in Defendants' moving papers, Plaintiff is provided with ready alternatives
19 to religious CDs in the form of a functioning chapel, chaplain, chapel library, freedom of
20 association with fellow inmates, and the ability to request any religious materials in written
21 format. (CD # 18 at 10.) Furthermore, permitting inmates to receive religious CDs from non-
22 approved vendors would cause substantial increased costs for Defendants. Because these
23 materials would not be originating from known vendors whose packaging and security protocols
24 have been established, Defendants would have to inspect each package received to check for
25 contraband or disallowed material. This could take substantial time and resources from CDCR
26 staff, and is unreasonable in light of the religious practice alternatives already available to
27 inmates.

28 Because all four *Turner* factors weigh in Defendants' favor, Plaintiff's First Amendment

1 claim fails, and this suit must be dismissed.

2 **III.**

3 **PLAINTIFF'S CLAIMS AGAINST DEFENDANTS WOODFORD, TILTON,**
 4 **HUBBARD, KANE, CURRY, HILL, AND GRANNIS MUST BE DISMISSED**
 5 **BECAUSE THEY FAIL TO ALLEGE SUFFICIENT FACTS TO SUPPORT**
 6 **A THEORY OF SUPERVISOR LIABILITY.**

7 Defendants Woodford, Tilton, Hubbard, Kane, Curry, Hill and Grannis moved to dismiss
 8 Plaintiff's claims against them on the grounds that insufficient evidence was provided regarding
 9 their knowledge of or participation in the alleged constitutional violation committed against the
 10 Plaintiff. In his opposition, Plaintiff claims that he specified the role of each named Defendant in
 11 creating, implementing, or enforcing the approved vendor policy that caused Plaintiff's
 12 constitutional deprivation. However, Plaintiff's assertions regarding each Defendant's role were
 13 generalized statements that cannot be the basis for the imposition of supervisor liability under a §
 14 1983 claim. Accordingly, Plaintiff's claims against these certain Defendants must be dismissed.

15 In pleading the alleged roles of Defendants Woodford, Tilton, Hubbard, Kane, and Curry,
 16 Plaintiff states that their "acts and omissions in [implementing or maintaining the CDCR policy
 17 regarding approved vendors] were a substantial factor in violating Plaintiff's right to be free to
 18 exercise his religion guaranteed by the First Amendment." (CD # 1, at 3(e)-(g).) Furthermore, in
 19 pleading the alleged roles of Defendants Hill and Grannis, Plaintiff claimed that they "failed to
 20 take action when they became aware of Plaintiffs' injuries" and "[t]heir omissions were
 21 substantial factors in maintaining the violations of Plaintiff's rights to be free to exercise his
 22 religion guaranteed by the First Amendment." (CD # 1 at 3(g).)

23 However, as was argued in Defendants' moving papers, liability in a § 1983 claim will only
 24 attach to supervisors if they personally participated in an alleged constitutional violation, or had
 25 knowledge that their subordinates were violating another's constitutional rights and did nothing to
 26 prevent it. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). Thus, to bring a successful §
 27 1983 claim against these Defendants, Plaintiff must allege and prove that these Defendants either
 28 personally committed acts which had a direct causal connection to Plaintiff's alleged
 constitutional violation, or that these Defendants knew of alleged constitutional violations

1 committed by their subordinates. *Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir. 1986).
 2 Plaintiff's complaint fails to allege this causal link, and thus the noted Defendants cannot be held
 3 liable under a theory of supervisor liability.^{2/}

4 Plaintiffs's uniform assertion that supervisory Defendant personnel took part in the
 5 enactment and enforcement of one article in the voluminous Departmental Operations Manual is
 6 an insufficient basis upon which to mount a constitutional attack. *See Walker v. Woodford*, 454 F.
 7 Supp. 2d 1007, 1016 (S.D. Cal. 2006) (Senior defendant prison official dismissed from suit where
 8 she neither knew of nor participated in any Constitutional violations). Furthermore, Plaintiff's
 9 allegation that Defendants Hill and Grannis failed to take action when they became aware of
 10 Plaintiff's injuries is a similarly inadequate means to implicate a constitutional violation on their
 11 part. In each instance, Plaintiff fails to make a necessary link between the Defendants' alleged
 12 wrongful conduct and the constitutional violation. Because Plaintiff failed to sufficiently allege
 13 supervisor liability on the part of these Defendants, they should be dismissed from this case.

14 IV.

15 DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.

16 In their moving papers, Defendants assert that they are entitled to qualified immunity from
 17 suit because Plaintiff failed to demonstrate the his First Amendment rights were violated and they
 18 acted reasonably in withholding the CDs from Plaintiff based on legitimate penological reasons.
 19 In his opposition, Plaintiff contends that Defendants are not entitled to qualified immunity
 20 because they should have been aware of a court decision allegedly involving similar facts to
 21 Plaintiff's situation. However, as Plaintiff acknowledges, that court decision was specifically

22
 23 2. Plaintiff cites to the decision in *Jesus Christ Prison Ministries v. California Dept. of*
 24 *Corrections*, 456 F. Supp. 2d 1188 (E.D. Cal. 2006), throughout his opposition for support.
 25 However, Plaintiff neglects to acknowledge that in that decision, the court dismissed Defendant
 26 Woodford, who was holding the same position as Director of CDCR at that time. Noting that "[n]o
 27 evidence before the court suggests Director Woodford's personal involvement in the issuing of that
 28 memorandum or in any other changes in mail policies at [the facility]," the court found that
 Woodford was not personally involved in imposing the mail policies. *Id.* at 1197. In the instant
 case, Plaintiff fails to demonstrate that Defendants Woodford, Tilton, or Hubbard played a
 significant role in effecting the mail policies at CTF that caused Plaintiff's alleged constitutional
 deprivation.

1 limited in its scope. As such, Defendants are entitled to qualified immunity from suit as it relates
2 to the alleged violations suffered by Plaintiff.

3 Plaintiff's assertion that Defendants are not entitled to qualified immunity because they
4 should have been aware of the decision in *Jesus Christ Prison Ministries v. California Dep't of*
5 *Corrections*, 456 F. Supp. 2d 1188 (E.D. Cal. 2006), is flawed. In his opposition, Plaintiff notes
6 that the *JCPM* decision was issued three days *after* Plaintiff was not allowed to receive the CDs at
7 the CTF mail room. (CD # 21 at 18.) Plaintiff also acknowledges that the scope of *JCPM* was
8 limited to a single prison ministry, three inmate plaintiffs, and one CDCR facility located in the
9 Eastern District of California. *Id*; *see also JCPM*, 456 F. Supp. 2d at 1195. As discussed below,
10 these two undisputed facts demonstrate that Defendants are entitled to qualified immunity.

11 First, Plaintiff's own complaint states that Defendants Woodford, Tilton, Hubbard, Kane,
12 and Curry caused Article 43 of the Department Operations Manual (DOM) to be implemented
13 between March 2005 and June 2006. (CD # 1 at 3(a)-(b), (f).) Because these dates clearly
14 precede the issuance of the *JCPM* decision, it is impossible for these Defendants to have known
15 that, at the time the alleged deprivation of Plaintiff's First Amendment right occurred, their
16 conduct was unlawful in promulgating the regulation. *See Saucier v. Katz*, 533 U.S. 194, 201-02
17 (2001.) Second, given that the *JCPM* court specifically limited its application and holding to a
18 closed universe of persons and facilities, there is no way that Defendants Hedrick, Hill, and
19 Grannis would have been aware of any potential application the decision had on their processing
20 of the Plaintiff's administrative grievance. Plaintiff's appeals were resolved less than six months
21 after the *JCPM* decision (CD # 1 at 3(e)), which plainly stated that the evidence in that case was
22 not sufficiently developed to encompass all CDCR facilities. *JCPM*, 456 F. Supp. 2d at 1195.
23 Plaintiff's assertion that this singular result "should have put CDCR and CTF on notice" of a
24 system-wide issue ignores the decision's own limitations. (CD # 21 at 18.)

25 As discussed in Defendants' motion to dismiss, Plaintiff has not alleged sufficient facts to
26 support a cognizable legal theory that Defendants violated his First Amendment right to the free
27 exercise of religion by restricting his possession of religious CDs in prison. Furthermore,
28 Plaintiff's acknowledgment of the timing and specific holding of the *JCPM* decision demonstrate

1 that Defendants acted as reasonable officials throughout the relevant period. Therefore,
2 Defendants are entitled to qualified immunity.

3 V.

4 **PLAINTIFF FAILS TO STATE SUFFICIENT FACTS TO SUPPORT**
5 **A CLAIM FOR PUNITIVE DAMAGES.**

6 Defendants also moved the Court to dismiss Plaintiff's claim for an award of punitive
7 damages on the grounds that the complaint fails to allege that Defendants acted with the requisite
8 evil motive or callous indifference. Plaintiff's opposition does not sufficiently counter this aspect
9 of Defendants' motion to dismiss, nor does Plaintiff supply additional information justifying
10 punitive damages against Defendants in either their official or individual capacities. As such,
11 Plaintiff's request for punitive damages should be dismissed.

12 **CONCLUSION**

13 For the reasons mentioned in this reply brief and in Defendants' moving papers, Defendants
14 respectfully request that the Court grant their Motion to Dismiss.

15
16 Dated: July 10, 2008

Respectfully submitted,

17 EDMUND G. BROWN JR.
18 Attorney General of the State of California

19 DAVID S. CHANEY
Chief Assistant Attorney General

20 ROCHELLE C. EAST
Acting Senior Assistant Attorney General

21 JONATHAN L. WOLFF
22 Supervising Deputy Attorney General

23 /S/ KYLE A. LEWIS

24 KYLE A. LEWIS

Deputy Attorney General

25 Attorneys for Defendants James Tilton, Jeanne Woodford, Suzan
26 Hubbard, Anthony P. Kane, Ben Curry, W. J. Hill, B. Hedrick,
and N. Grannis

27 ReplyMunoz20122053.wpd
SF2008401051

28 Defs.' Reply Supp. Mot. to Dismiss

Munoz v. Tilton, et al.
Case No. C 07-3846 JF